



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1998

Mr. James M. Kuboviak
Brazos County Attorney
300 East 26th, Suite 325
Bryan, Texas 77803

OR98-0311

Dear Mr. Kuboviak:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112145.

The Brazos County Attorney's Office received a request for the probable cause statement concerning the arrest of a named individual. You claim that the requested information, the probable cause affidavit, is excepted from required public disclosure by sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

We note that an affidavit, once filed with the court, becomes a public record and may not be withheld. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, if the affidavit has been filed with a court, it cannot now be withheld.

If the affidavit has not been filed with a court, we find that you may withhold it under section 552.103. Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that a prosecution is currently pending regarding the subject of this request concerning the offense outlined in the affidavit. *State v. Curtis Ward Rittman*, Cause No.1396-96 (County Ct. At Law No. 2, Brazos County, Tex.). You have provided this office with the docket sheet and the notice of setting in the case. You have shown that litigation is pending. We also find that the requested information relates to the litigation. Thus, section 552.103 protects the affidavit from disclosure. Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

¹As we address the instant matter under section 552.103, we need not address section 552.108 of the However, the type of information that is generally found on the front page of an offense or arrest report must be released. See Open Records Decision No. 127 (1976) at 5; Open Records Decision No. 362 (1983).

Ref: ID# 112145

Enclosures: Submitted documents

cc: Ms. Annette K. Hanna
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(w/o enclosures)